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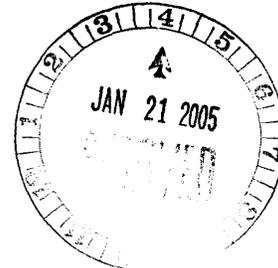
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January 21, 2005

BY HAND DELIVERY

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Finance Docket No. 34649, New York & Greenwood Lake
Railway—Feeder Line Application—A Line of Norfolk Southern
Railway Application

Dear Secretary Williams:

I enclose for filing in the above-captioned proceeding an original and 10 copies of a Motion of Norfolk Southern Railway Company To Reject Feeder Line Application and Deny Discovery Request.

Sincerely,

A handwritten signature in cursive script that reads "Richard A. Allen".

Richard A. Allen

cc: (w/encl.)

Fritz R. Kahn, Esq.

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Office of Proceedings

JAN 21 2005

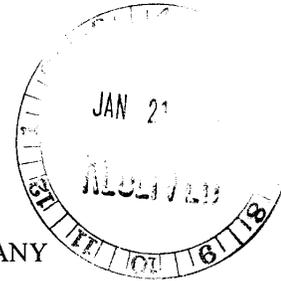
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213064

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34649

NEW YORK & GREENWOOD LAKE RAILWAY
—FEEDER LINE APPLICATION—
A LINE OF NORFOLK SOUTHERN RAILWAY COMPANY



**MOTION OF NORFOLK SOUTHERN RAILWAY COMPANY
TO REJECT FEEDER LINE APPLICATION
AND DENY DISCOVERY REQUEST**

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*Attorneys for
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34649

NEW YORK & GREENWOOD LAKE RAILWAY
—FEEDER LINE APPLICATION—
A LINE OF NORFOLK SOUTHERN RAILWAY COMPANY

**MOTION OF NORFOLK SOUTHERN RAILWAY COMPANY
TO REJECT FEEDER LINE APPLICATION
AND DENY DISCOVERY REQUEST**

Norfolk Southern Railway Company (“NSR”) moves the Board to (1) reject the feeder line application filed on January 6, 2005 (“Application”) by the New York & Greenwood Lake Railway (“NYGL”), which seeks to acquire, pursuant to 49 U.S.C. §10907 and 49 C.F.R. § 1151.1 *et seq.*, ten miles of NSR railroad line in Essex and Hudson Counties, New Jersey (hereafter, the “Line”), and (2) deny NYGL’s associated request to allow discovery.

As discussed below, the Application is deficient in at least two respects, either of which would require its rejection. First, it relies on the incorrect assertion that a portion of the Line is listed on NSR’s System Diagram Map (“SDM”) and it fails to allege that the forced sale of the Line under 49 U.S.C. §10907 is permitted or required by the public convenience and necessity, as would be required by § 10907(b)(1), or allege any facts that would support such a claim. Second, it is filed with respect to a line that is the subject of a previously filed Notice of Exemption, which was filed pursuant to the class exemption long established by the Board for lines that have had no local traffic for at least two years. Inasmuch as the offer of financial

assistance (“OFA”) procedures under 49 U.S.C. §10904 provide a fully adequate means for NYGL or any other interested party to preserve rail service if they wish to, use of the feeder line provision to force a railroad to sell a line it does not wish to sell and that it wishes only to discontinue and not abandon is inappropriate.

BACKGROUND

NYGL operates a 1.8 mile branch line of railroad between Passaic, NJ and Garfield, NJ, which NYGL acquired in 1996 from Consolidated Rail Corporation (“Conrail”) pursuant to an OFA made after the Board issued a notice exempting Conrail’s proposed abandonment of that line.

The Line NYGL seeks to acquire consists of the stem and two branches of a “Y” that runs from a connection with a New Jersey Transit (“NJT”) line (over which NSR has exclusive freight operating rights) near Secaucus, NJ west across the Hackensack River and divides, one branch running northwesterly to North Newark (the “Boonton Line Segment”), and the other, known as the “Newark Industrial Track,” running southwesterly to its terminus in Kearney, NJ. See Map at Exhibit 1. The Boonton Line Segment is part of an NSR line that continues north and west across New Jersey known as the Boonton Line. The Line is well to the south of, and is not connected to, the line operated by NYGL. The only connections to the Line are owned by NSR and operated by NSR and New Jersey Transit.

The Boonton Line is owned by NSR, which acquired it from Conrail pursuant to the transaction approved by the Board in *CSX Corp. et al. – Control and Operating Leases/Agreements – Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (the “Conrail Transaction”). New Jersey Transit (“NJT”) provides passenger service over portions of the Boonton Line between Hoboken and Hackettstown, NJ, pursuant to a lease under which NSR retains exclusive freight

rights. In September 2002, NJT completed a rail link that allowed direct service to midtown Manhattan and made certain changes in its operations that resulted in NJT's terminating its passenger service over the Boonton Line Segment. See NJT "Customer Notice," attached as Exhibit 1.¹

When NJT announced its plans to terminate service over the Boonton Line Segment, it issued a notice to its customers asserting that NYGL had represented that NYGL was planning to provide passenger service over that line into Hoboken. NJT advised its customers:

This is simply not true and is an inappropriate representation on their part. . . . It is important for you to know that New York Greenwood Lake Railway representatives have not demonstrated the financial capability to operate rail passenger service, have not received the appropriate approvals from the Federal Railway Administration, nor have they received the authority to operate along the line from the owner, Norfolk Southern. They have failed to provide the necessary documentation needed by NJ TRANSIT to assess whether its railroad could safely and efficiently operate into Hoboken, including an overall business plan, proper insurance information, financial documentation, and service plan among others; Lacking this information, there is no agreement for New York Greenwood Lake to provide service from these stations.

Exhibit 2.

In the last two years of the Board's oversight proceeding concerning the Conrail Transaction, a group styling itself the "Lackawanna Coalition"² filed comments supporting a

¹ As explained in the Notice of Exemption NSR filed on December 29, 2004, NJT has evidently decided not to reactivate passenger service over the Boonton Line Segment given the high cost of repair work (\$26 million in immediate track, signal, bridge and other repair work), necessary capital expenditures (\$46 million over the next 10 years) and operating costs (\$3 million per year) and the low ridership (800 passengers per day, yielding \$108,000 in annual revenues) necessary to bring the line up to passenger service standards.

² The Lackawanna Coalition described itself as "an independent coalition which advocates on behalf of rail riders on New Jersey Transit's Morris & Essex and Montclair-Boonton Lines." Lackawanna Coalition Comments dated July 10 2003 at 1, filed in *CSX Corp. et al. - Control and Operating Leases/Agreements-Conrail Inc. et al.*, STB Finance Docket No. 33388 (Sub-No. 91) ("*Conrail Oversight*").

proposal by NYGL to provide passenger service on the Boonton Line and requesting the Board to take the Boonton Line away from NSR and give it to some “local, New Jersey-oriented entity.”³ In opposing these requests, Norfolk Southern advised the Board that “as for the ‘proposal’ by [NYGL] to operate commuter passenger service, there is no agreement in place, and no negotiations in progress, for NYGL to operate such service. NS has repeatedly asked NYGL to provide a viable business plan for such service, including financial information and proof of sufficient liability insurance, neither of which NYGL has provided.”⁴ Norfolk Southern also stated that “NS believes the Boonton Line is important to NS’ future operating capabilities. NS has no present intention of abandoning the line; although NS might not presently operate over a portion of the Line, it is, and will remain, available and accessible in the event future business opportunities arise.”⁵

The Board rejected the Lackawanna Coalition’s requests. In its decision served October 20, 2004, the Board stated: “The Lackawanna Coalition made a similar request in the fourth annual round of this proceeding. Now, as then, the relief it seeks has nothing to do with any purported harm arising from the Conrail Transaction. See Oversight Dec. 11, slip op. at 11. There is simply no evidence, and no reason to believe, that the allocation to NSR of certain lines formerly operated by Conrail has made restoration of rail passenger service on these lines any

³ *Conrail Oversight*, Lackawanna Coalition Comments, dated July 10, 2003 at 2, and Lackawanna Coalition Comments dated March 25, 2004 at 7.

⁴ *Conrail Oversight*, NS-11, dated August 4, 2003, at 13.

⁵ *Id.* at 13-14.

more or less likely than it was prior to the Conrail Transaction.”⁶ The Board also noted that there was no precedent for granting requested the divestiture sought by the Coalition.⁷

There has been no local or overhead freight service over the Line for at least two years. In support of the Notice of Exemption filed on December 29, 2004 to authorize discontinuance of service, Mr. D.A. Brown II, General Manager of NSR’s Northern Region, certified that “no local traffic has moved over the line for at least two years, that no overhead traffic has moved over the line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; and that no formal complaint filed by a user of NSR’s freight rail service on the line or a state or local government entity acting on behalf of such user regarding cessation of service over the line either is pending before the Surface Transportation Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period.”

On September 20, 2003, NSR caused a legal notice to be published in the Newark Star Ledger stating that NSR had amended its SDM “to show that NSR and Pennsylvania Lines LLC (PRR) anticipate filing with the Surface Transportation Board within three years an application for authority to discontinue rail operations over the Boonton, New Jersey rail line between Milepost WD-2.2 and Milepost WD-8.4.” As explained in the attached verified statement of Jani Marie Lipps (Exhibit 3), this notice, which pertained only to the Boonton Line Segment of the Line, was incorrect. NSR had not amended its SDM with regard to the Boonton Line Segment, as NYGL is presumably aware. In March 2004, Mr. J.R. Wilson, President of NYGL, asked

⁶ *Conrail Oversight*, Decision No. 17, slip op. at 15 (served October 20, 2004).

⁷ *See Conrail Oversight*, Decision No. 11, slip op. at 11 (served January 21, 2004).

NSR for a copy of its SDM, and NSR sent him one on May 23, 2004. *See* Exhibit 3, Attachment. This Map does not show the Boonton Line Segment in Category 1 or 2.⁸

On December 29, 2004, NSR filed a Notice of Exemption for the discontinuance of service over the Line under the class exemption established in 49 C.F.R. § 1152.50 for lines that have been out of service for more than two years without complaint from any users of the line. Pursuant to § 1152.50(d)(3), the Board published notice in the Federal Register on January 18, 2005 providing that the exemption will take effect on February 17, 2005 unless stayed or a “formal expression of intent to file an [OFA] has been received.”

ARGUMENT

I. THE BOARD SHOULD REJECT THE APPLICATION.

The Board’s regulations regarding feeder line applications provide that the Board, through the Director of the Office of Proceedings, will accept complete applications or reject incomplete applications within 30 days of the filing of the application. 49 C.F.R. § 1151.2(b). The regulations also specify in detail what applications must contain. 49 C.F.R. § 1151.3. For the reasons stated below, the Board should reject the Application on either or both of two separate grounds, either of which would require rejection: (1) the application is incomplete in several material respects, most significantly by failing to allege or show that the public convenience and necessity require or permit the forced sale of the line to NYGL, and (2) the application is filed with respect to a line that is the subject of a previously-filed notice of exemption.

⁸ NSR filed this SDM with the Board on March 26, 2004 and has not amended it since then. Exhibit 3, Paragraph 5.

A. The Application Is Incomplete in Material Respects.

Title 49 contains several provisions that provide interested parties with the ability to preserve adequate rail service over rail lines when the incumbent railroad has ceased to do so. When rail service has ceased because the incumbent carrier has obtained authority from the Board to abandon the line or discontinue service, 49 U.S.C. §10904 enables any “financially responsible person” to preserve rail service by making an OFA either to subsidize service by the incumbent or purchase the line itself and operate it for at least two years. The feeder line provision, § 10907, provides “financially responsible person[s]” an alternative means of preserving service in two other situations: (1) where the incumbent carrier has not filed for abandonment or discontinuance authority but has indicated its intent or expectation of making such a filing by designating the line in Category 1 or 2 of its SDM pursuant to 49 C.F.R. §1152.10; and (2) where the incumbent carrier has not filed for abandonment and discontinuance or put the line in Category 1 or 2 of its SDM, but has permitted service to become inadequate and the other circumstances specified in 49 U.S.C. § 10907(c) are present. The statute and regulations refer to the second situation as one in which the Board may find that “the public convenience and necessity [or “PC&N”] require or permit the sale of a railroad line.” In either situation, the statute permits the Board to require the incumbent carrier to sell a line to a financially responsible person for a “constitutional minimum value” agreed to by the parties or determined by the Board.

NYGL’s Application relies entirely on the contention that the first situation obtains with respect to the Line. Paragraph 16 asserts: “The railroad line sought to be acquired is in Category 1 of NS’ System Diagram Map. A copy of the Legal Notice appearing in The Star Ledger of Newark, New Jersey of September 20, 2003, is attached.” The Application does not allege that

PC&N requires or permits the forced sale of the Line, nor does it contain any allegations that would support such a claim.

The allegation that the Line is in Category 1 of NSR's SDM is incorrect. As discussed earlier, the Legal Notice, which referred only to the Boonton Line Segment of the Line, was mistaken. NYGL should be well aware of this fact, inasmuch as its President, Mr. Wilson, subsequently asked NSR for a copy of its SDM and was provided a copy of it under a cover letter dated March 23, 2004, and the SDM provided did not have any part of the Line in Category 1 or Category 2.

Since NYGL cannot rely on the Line's being in Category 1 or 2 of NSR's SDM, it could proceed only on the basis of a claim that PC&N requires the sale of the Line, but in that respect, the Application is clearly incomplete under the regulations. Section 1151.3(a)(11)(i) of the regulations provides:

(i) If the Applicant seeks a finding of public convenience and necessity, the application must contain detailed evidence that permits the Board to find that:

(A) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(B) The transportation over the line is inadequate for a majority of shippers who transport traffic over the line;

(C) The sale of the line will not have a significantly adverse effect on the rail carrier operating the line;

(D) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

(E) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

Far from containing "detailed evidence" on these matters, the Application contains *no* evidence, or even allegations, regarding them.

Moreover, even if the Legal Notice cited in Paragraph 16 had been correct, the Application would be plainly incomplete, because the Legal Notice only referred to the Boonton Line Segment and made no reference to the other part of the line that NYGL seeks to acquire, the Newark Industrial Track. As to that part of the Line, the Application would have to allege and demonstrate PC&N even if the Boonton Line Segment had been in Category 1 or 2 of NSR's SDM.

The Application is also materially incomplete in other respects as well. Section 1151.3(a)(3) requires applications to contain "[i]nformation sufficient to demonstrate that the applicant is a financially responsible person." The Application, however, merely asserts that NYGL is a financially responsible person but contains no information whatsoever to support that conclusory allegation – no financial statements, no description of its business, no letters of intent from banks or prospective customers to provide financing or tender traffic, nothing. NYGL cannot excuse this complete lack of information about its own capabilities by asserting that NSR has not yet given it information about the going concern or net liquidation value of the Line. Even if the value of the Line were zero – which it certainly is not – and even if it required no rehabilitation – which it certainly does – NYGL would be required to be "able to assure that adequate transportation will be provided over [the] line for a period of not less than three years." 49 U.S.C. § 10907(a)(2). The Application contains no information whatever permitting the Board to find that NYGL could satisfy that requirement.

The Application also fails to include an operating plan that "describes in detail the service that is to be provided over the line," as required by 49 C.F.R. §1151.3(a)(7). The vague and general statements contained in paragraphs 11 and 12 hardly qualify as a detailed operating plan.

For the foregoing reasons, NYGL's Application is materially incomplete and should be rejected. Although 49 C.F.R. §1151.2(d) permits the Board to accept certain incomplete applications on a conditional basis, this is not such an application. Those are applications in which the applicant "is unable to obtain required information that is primarily within the personal knowledge of the owning carrier." The deficiencies in the Application that have been identified relate to its failure to provide required information that is not primarily within NSR's knowledge but information demonstrating PC&N, NYGL's financial capacity to operate the Line for three years and NYGL's operating plan that would be fully available to NYGL if it in fact exists.

B. The Line Sought to Be Acquired Is The Subject Of A Previously-Filed Discontinuance Exemption.

Except in extraordinary circumstances that have not been shown here, feeder line applications are not appropriate with respect to lines that are the subject of previously-filed applications or exemption petitions for abandonment or discontinuance. The reason is that OFA procedures provide financially responsible parties ample means to preserve rail service in cases where the carrier has initiated the process of obtaining abandonment or discontinuance authority. When, as here, the authority being sought is only discontinuance authority, the OFA procedures permit the offeror to preserve service by providing a subsidy to the incumbent carrier to provide the service, but they do not permit the more extreme measure of forcing the carrier to sell the line to the offeror for the offeror to operate itself. *See, e.g. CSX Transportation, Inc.—*

Discontinuance—at Memphis, in Shelby County, TN, STB Docket No. AB-55 (Sub No. 618) ("only offers of financial assistance (OFA) under 49 U.S.C. 10904 to subsidize (not purchase) the line will be entertained.")

The feeder line program was designed to protect service in cases where abandonment or discontinuance authority has not been sought and where, therefore, OFAs are not available to

ensure adequate service. As the Board's predecessor, the Interstate Commerce Commission ("ICC") noted when it revised the feeder line rules in 1991, "Congress' express intent [was] that the feeder line program be subordinate to the abandonment program." *Revision of Feeder Line Development Rules*, 7 I.C.C. 902, 911 (1991).

The ICC squarely held that feeder line applications are not appropriate in the case of lines over which discontinuance authority is in effect when the feeder line application is filed. In *PSI Energy, Inc. – Feeder Line Development – Norfolk Southern Corp. Line between Cynthia and Carol, IN*, 7 I.C.C. 2d 227 (1991), PSI Energy filed a feeder line application for a line with respect to which the United States Railway Association had granted discontinuance authority in 1991. The line was not on NSR's SDM, and PSI Energy alleged that PC&N required the forced sale. NSR moved to dismiss, arguing that there could be no feeder line application with respect to a line over which discontinuance had been authorized and therefore there was no legal obligation to provide service.

The ICC dismissed the application. It said:

We need not rule here on whether § 10910(c)(1) can never be available in the absence of a current obligation to provide service. Rather, we find that the instant application can and should be disposed of on narrower grounds: that it is premature here, for the reason we will now explain.

PSI's feeder line application is predicated upon a need for reinstated service. However, NS both disputes this need and maintains that it cannot be faulted for not providing any service on the line when it has no duty to do so. . . . Thus, a critical first step in this case is to determine whether there is a current need for service on this line that should be met. There is a procedure available to resolve that underlying issue that is less drastic than a forced taking of the property from NS. That is for PSI to petition to have NS' discontinuance authority terminated (based on changed circumstances) and the service obligation reinstated for this line. If PSI should successfully demonstrate that service ought to be resumed at this time, NS would then be obligated to restore the line and provide service on it. At that point, if NS met that obligation, then PSI's interests would be satisfied without depriving NS of the business opportunity for which it acquired this inactive line. If, on the other hand, NS failed to meet its obligations, then PSI

could renew its feeder line application at that time. PSI would then be in a better position to make the showing required by § 10910(c)(1).

7 I.C.C.2d at 231-232.

In this case, the exemption sought by the Notice of Exemption NSR filed on December 29, 2004 has not yet gone into effect, but the ICC's reasoning supports a similar dismissal of the Application here. Indeed, since parties wishing to preserve service have the OFA procedure that was not available to PSI Energy, the case for dismissal is even stronger. To permit parties to acquire a line under 49 U.S.C. §10907 over which a railroad is seeking only to discontinue service would allow them to circumvent the important distinction in the OFA procedures between abandonments and discontinuances and the principle that other parties may not use the OFA procedures to acquire lines that the owner wishes merely to discontinue and not abandon.

Furthermore, the underlying issue here, as in *PSI Energy*, is whether there is a current need for service on the Line that should be met. The class exemption established by the agency for out-of-service lines presumes that there is not, given the lack of local service for more than two years and the absence of complaints from shippers. But if NYGL or any other party wishes to try to show that there is a need for service and for the retention of a legal obligation to provide it, it may petition the Board to suspend the effectiveness of the exemption before it goes into effect or to revoke the exemption after it goes into effect. (On the other hand, if there is no public need for service and the Board permits the legal obligation to end, then, by definition, there can be no failure to provide the "adequate service" that 49 U.S.C. § 10907 was enacted to preserve.) As in the *PSI Energy* case, those procedures should be exhausted before a party may

seek the extreme measure of divesting a railroad of a line it wishes to retain for possible future business.⁹

Indeed, the Board's rules appear to require the automatic dismissal of all feeder line applications based on the SDM standard (as NYGL's purports to be) seeking to acquire lines that are the subject of previously-filed applications or exemption petitions and notices for abandonment or discontinuance. 49 C.F.R. §1151.1 states: "A rail line is eligible for a forced sale if it appears in category 1 or 2 of the owning railroad's system diagram map (but the railroad has not filed an application to abandon the line) or the public convenience and necessity, as defined in 49 U.S.C. 10907(c)(1) permit or require the sale of the line." Although the parenthetical refers to "an application to abandon the line," the ICC has held that lines are also not eligible if the carrier has filed for an exemption of the abandonment,¹⁰ and the term "abandonment" for these purposes appears to include discontinuances.¹¹

⁹ In this case, NYGL does not even assert that there is a need for service on the line that should be met or that NSR should not be authorized to discontinue service. Paragraph 11 of the Application merely states: "Understandably, NYGL currently has no rate agreements or contracts with shippers which it would serve via the railroad line to be acquired; however, it has had expressions of interest from potential shippers and anticipates being able to negotiate rate agreements or contracts with them once it acquires the property."

¹⁰ *Sunshine Mills, Inc. – Feeder Line Acquisition – Norfolk Southern Railway Company Line Between Corinth, MS and Haleyville, AL*, STB Finance Docket No. 32337 (served August 23, 1993), slip op. at n. 5.

¹¹ 49 U.S.C. § 10907(b)(1)(A)(ii) refers to lines "on a system diagram map as required under section 10903," and 49 U.S.C. § 10903(c)(2)(B) requires carriers to identify on their SDMs "each railroad line for which the rail carrier plans to file an application to abandon *or discontinue* under subsection (a) of this section" (emphasis supplied), as do the implementing regulations. See 49 C.F.R. § 1152.10(b)(1) and (2). See also 49 C.F.R. § 1152.25(a)(3)(iii), which requires abandonment protestants who have filed feeder line applications to show that "the feeder line application was filed prior to the date the abandonment *or discontinuance* application was filed." Emphasis supplied.

Even if the Application were based on PC&N (as it should be), rejection would be warranted in view of the previously-filed Notice of Exemption. At one time, the ICC also automatically rejected PC&N-based feeder line applications filed when a previously-filed application to abandon all or part of the same line was pending. In 1991, the ICC changed this policy to decide on a case-by-case basis whether to reject PC&N-based feeder line applications in those circumstances. *Revision of Feeder Line Development Rules*, 7 I.C.C. 911-914. The ICC explained that exceptional circumstances had occasionally arisen where it was inappropriate to reject PC&N-based feeder line applications filed after the filing of abandonment applications pertaining to all or some of the same line, and that its policy henceforth would be to “afford the feeder line applicant an opportunity to show why the OFA process is not a viable alternative to acquiring the line under the PC&N standards of the statute.” 7 I.C.C.2d at 914.

The ICC, however, acknowledged that Congress intended the feeder line program to be subordinate to the abandonment provisions (7 I.C.C. 2d at 911), and the only exceptional circumstance the agency has indicated would warrant acceptance of a feeder application filed after an abandonment application has been filed are cases where the feeder line applicant seeks to acquire more tracks than are the subject of the abandonment application. *See Revision of Feeder Line Development Rules*, 7 I.C.C. at 911, 914; *Sunshine Mills, Inc. – Feeder Line Acquisition – Norfolk Southern Railway Company Line Between Corinth, MS, and Haleyville, AL*, Finance Docket No. 32337 (served October 7, 1993).¹²

¹² The case-by-case policy applies only in the case of feeder line applications based on PC&N. Feeder line applications based on the SDM standard are subject to automatic rejection to the extent they apply to lines subject to previously filed abandonment applications and exemption petitions and notices. *Revision of Feeder Railroad Development Rules*, 7 I.C.C.2d at 911; *Sunshine Mills, Inc. – Feeder Line Acquisition – Norfolk Southern Railway Company Line Between Corinth, MS and Haleyville, AL*, STB Finance Docket No. 32337 (served August 23, (continued...))

Even if the Application were based on PC&N and therefore subject to the case-by-case review policy, it should be rejected because NYGL has alleged nothing to suggest that those exceptional circumstances exist here or that the OFA procedure “is not a viable alternative to acquiring the line under the PC&N standards of the statute.” *Revision of Feeder Line Development Rules*, 7 I.C.C.2d at 914. As the ICC found in the *PSI Energy* case, unless and until it has been determined that there is a public need for continued service and the incumbent carrier has failed to meet that need, there is no warrant for the Board to require one carrier to sell to another carrier a line that the first carrier wishes to retain for possible future needs or business opportunities.

II. NYGL’s REQUEST FOR DISCOVERY SHOULD BE DENIED.

Because NYGL’s Application should be rejected for the deficiencies and impediments discussed above, its associated request to serve interrogatories and document requests on NSR should be denied. The interrogatories and document requests served with NYGL’s Application seek extensive and voluminous information about the Line and all traffic over the line for the last ten years. None of that information, however, would cure the deficiencies and impediments discussed and would not help to make the Application complete.

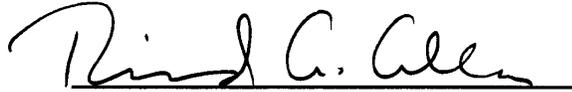
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1993), slip op. at 4 and n. 5. This rule appears to apply to applications, petitions and exemptions for discontinuance as well. See 49 C.F.R. 1152.25(a)(3)(iii).

CONCLUSION

The Board should reject NYGL's Application and deny NYGL's request to serve discovery on NSR.

Respectfully submitted,

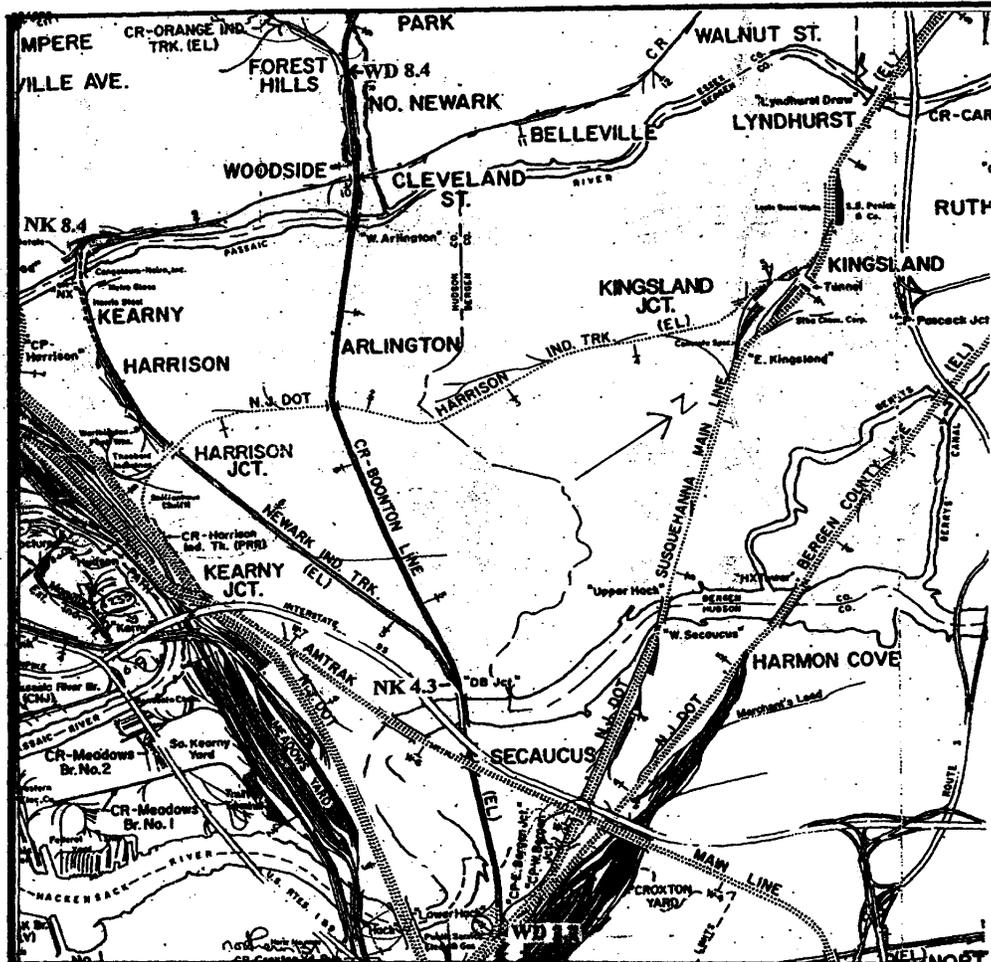


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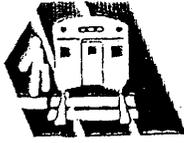
*Attorneys for
Norfolk Southern Railway Company*

January 21, 2005



NS NORFOLK SOUTHERN	
CP "West End" to Forest Hills "DB" Jet to Kearney Proposed Service Discontinuance	
Boonton Line	Newark Industrial Track
WD 2.2 - WD 8.4	NK 4.3 - NK 8.4
13	

ENGINEERING COMPANY
OFFICE OF CHIEF ENGINEER - DESIGN & CONSTRUCTION ATLANTA, GA.



Customer Notice

To Our Arlington Station, Rowe Street Station, and Benson Street Station Customers

As many of you know, NJ TRANSIT will be launching direct service to midtown Manhattan and Newark for Boonton and Montclair Branch riders on September 30. This service is a significant benefit for our riders because it opens up travel opportunities previously unavailable for the majority of travelers on these two rail lines. It will result, however, in the closure of three stations, Arlington, Rowe Street, and Benson Street, effective September 20.

Apparently, New York Greenwood Lake Railway has represented that they are planning to operate passenger rail service into Hoboken once NJ TRANSIT ceases its operation on Friday, September 20. This is simply not true and is an inappropriate representation on their part. NJ TRANSIT wants to set the record straight so that you have the necessary information to plan your commute on Monday, September 23.

It is important for you to know that New York Greenwood Lake Railway representatives have not demonstrated the financial capability to operate rail passenger service, have not received the appropriate approvals from the Federal Railway Administration, nor have they received the authority to operate along the line from the owner, Norfolk Southern. They have failed to provide the necessary documentation needed by NJ TRANSIT to assess whether its railroad could safely and efficiently operate into Hoboken, including an overall business plan, proper insurance information, financial documentation, and service plan among others. Lacking this information, there is no agreement for New York Greenwood Lake Railway to provide service from these stations.

As we have reported, Benson Street, Rowe Street and Arlington Stations on the Boonton Line will no longer be served after the last scheduled trip on Friday, September 20. Travel options notices, which include information about rail shuttle buses that will provide service to and from these closed stations to nearby stations, were distributed and will continue to be distributed at stations. This information is also available at Customer Service offices and on our website at www.njtransit.com.

NJ TRANSIT understands that the new Montclair-Boonton Line and the resulting closing of Benson Street, Rowe Street and Arlington stations could impact your daily commute. Because of this, we have been working with your local governments to provide you with alternative service, and have been actively promoting this by visiting your stations and distributing the information via customer notices, posters and newspaper inserts.

NJ TRANSIT will continue to assist each and every one of you during this transition period.

Customer Service - Monday - Friday - 8 a.m. - 5 p.m. ☎ 1 (800) 772-3606 in NJ (973) 491-9400 out-of-state
Transit Information Center - Daily - 6 a.m. - Midnight ☎ 1 (800) 772-2222 in NJ (973) 762-5100 out-of-state



VERIFIED STATEMENT OF JANI MARIE LIPPS

1. My name is Jani Marie Lipps. I am employed as Manager-Strategic Planning for Norfolk Southern Corporation (“NSC”). My responsibilities include the preparation of the Norfolk Southern Railway Company’s (“NSR”) System Diagram Map (“SDM”) and amendments thereto. My business address is: Three Commercial Place, Norfolk, VA 23510.

2. I am providing this statement in support of the opposition of NSR to a feeder line application filed by the New York & Greenwood Lake Railway (“NYGL”) in STB Finance Docket No. 34649 seeking to acquire ten miles of NSR line in Essex and Hudson Counties, New Jersey (hereafter, the “Line”).

3. I understand that in September 2003 NSR caused a legal notice to be published in the Star Ledger of Newark, New Jersey stating NSR had amended its SDM to show that NSR anticipated filing within three years an application for authority to discontinue service over a portion of the Line, between Milepost WD-2.2 and Milepost WD-8.4. This notice was incorrect. Although such an amendment had been considered, it was subsequently decided not to make that amendment to the SDM. NSR made the same decision with respect to two other lines, in Ohio and Virginia, as to which NSR has published similar legal notices.

4. The legal notice stated: “Copies of [NSR’s SDM] are available upon request from Strategic Planning, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191.” On or about March 22, 2004, Mr. J.R. Wilson, President of NYGL, made a verbal request of Mr. Steve Eisenach of NSC’s Strategic Planning Department, for a copy of NSR’s latest SDM. At Mr. Eisenach’s request, on March 23, 2004, I mailed to Mr. Wilson a copy of what my cover letter identified as “Norfolk Southern Corporation’s new ‘System Diagram

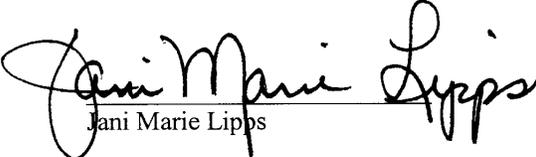
Map.’ A true copy of my cover letter, the enclosed SDM and a listing of lines on that map in Categories 1 through 4 are attached to this statement. The SDM bears the date “26-Aug-2003” on the lower right; the date “September 2003” is shown on the information panel on the front of the map, and the listing (Attachment “A”) bears the notation “(Rev. 9/15/03). Neither the SDM nor the listing shows any lines in New Jersey in any of the Categories 1 through 4.

5. NSR filed a copy of the SDM, including the listing, described in the previous paragraph with the Surface Transportation Board on or about March 26, 2004. This SDM and this listing have not been subsequently amended.

VERIFICATION

I, Jani Marie Lipps, verify under penalty of perjury, that I have read the foregoing Verified Statement of Jani Marie Lipps and the attachments thereto, that I know their contents, and that the same are true and correct to the best of my knowledge and belief.

Executed this 19th day of January, 2005.


Jani Marie Lipps

County/City of Norfolk
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 19th day of January
2005, by
Jani Marie Lipps
(name of person seeking acknowledgment)
Anna F. Salas
Notary Public
My commission expires: April 30, 2007



Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

Jani Marie Lipps
Manager-Strategic Planning

Writer's Direct Dial Number
Tel: 757.629.2677
Fax: 757.533.4884
E-mail: Jani.lipps@nscorp.com

March 23, 2004

Mr. J. R. Wilson
New York & Greenwood Lake Railway
P. O. Box 106
Glen Ridge, NJ 07028

Dear Mr. Wilson:

Per your request, enclosed is a copy of Norfolk Southern Corporation's new
'System Diagram Map.'

Sincerely,

A handwritten signature in black ink that reads "Jani Marie Lipps". The signature is written in a cursive, flowing style.

Jani Marie Lipps

Enclosure

Cy: J. R. Paschall
M. C. Kirchner
S. D. Eisenach

COPY

CERTIFICATE OF SERVICE

I certify that on January 21, 2005, a true copy of the foregoing "Motion Of Norfolk Southern Railway Company To Reject Feeder Line Application and Deny Discovery Request" was served by hand delivery upon:

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW
8th Floor
Washington, D.C. 20036-1601


Richard A. Allen